IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 24TH NOVEMBER 2006 / 3RD AGRAHAYANA 1928

WP(C).No. 31230 of 2006(P)

PETITIONERS:

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1. R. SANGEETHA, W/O.N.RGHUNATH NAIR, SURABHI, KIZHAKKUM MURI, KAVUMBHAGOM P.O., THIRUVALLA (TEACHER-IN-CHARGE, SKV LOWER PRIMARY SCHOOL, KIZHAKKUM MURI, KAVUMBHAGOM, THIRUVALLA).

2. B.S. SMITHA, W/O.C.RAJESH, CHANDRAVIHAR, NIRANAM NORTH P.O., THIRUVALLA (LOWER PRIMARY SCHOOL ASSISTANT SKV LOWER PRIMARY SCHOOL, KIZHAKKUM MURI, KAVUMBHAGOM, THRIRUVALLA).

BY ADV. SRI.S.SUBHASH CHAND

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF GENERAL EDUCATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF PUBLIC INSTRUCTION, OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.

3. DISTRICT EDUCATIONAL OFFICER, OFFICE OF THE DISTRICT EDUCATIONAL OFFICER, THIRUVALLA.

4. ASSISTANT EDUCATIONAL OFFICER,
OFFICE OF THE ASSISTANT EDUCATIONAL OFFICER,
THIRUVALLA.

5. MANAGER, SKV LOWER PRIMARY SCHOOL,
KIZHAKKUM MURI, KAVUMBHAGOM,
THIRUVALLA.

6. R. RATHEESH, S/O.K.P. RAMADASAN NAIR,
LEELA BHAVAN, PERUMPALAM P.O.,
ALAPPUZHA-688 570 (PRIMARY TEACHR
(LPS/UPS ASSISTANT) GHSS, PERUMPALAM).

BY GOVT. PLEADER SRI. A.J. VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No. 31230 OF 2006

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Dated this the 24th day of November, 2006

JUDGMENT

The case of the petitioners in brief is as follows:

First petitioner was appointed as LPSA by respondent No.5 in a permanent vacancy and it stands approved. Respondent No.6 was also appointed in a permanent vacancy, but on a later day. That appointment was also approved. First petitioner gave Ext.P3 statement of relinquishment. On the strength of the same, respondent No.5 temporarily promoted respondent No.6 as teacher in charge under Rule 45C of Chapter XIVA KER. As respondent No.6 secured employment in Government School vide Ext.P5, he requested the Manager to relieve him, so as to enable him to join Government School. He was relieved vide Ext.P7. Petitioner No.1 was promoted as teacher in charge vide Ext.P10 and in the consequential vacancy of LPSA respondent No.5 appointed petitioner No.2 vide Ext.P11. Respondent No.4 however rejected the appointment of the petitioners on the ground that relieving of respondent No.6 was irregular vide Exts.P12 and P13. It is stated that the other defects pointed out were cleared by respondent

No.5. Respondent No.5 filed appeals against Exts.P12 and P13 orders before respondent No.3, which came to be rejected by relying on Ext.P14 Circular. The objection would appear to be that the withdrawal of relinquishment of right of temporary promotion cannot be allowed as the earlier relinquishment vide Ext.P3 had become final. Exts.P18 and P19 had been filed by respondent No.5 before the second respondent. It is submitted that Exts.P18 and P19 were heard on 18.10.2006. Thereafter petitioners have filed Ext.P20 before the second respondent, wherein petitioners have purported to bring to the notice of the second respondent the fact that Ext.P14 Circular has been cancelled by Ext.P16. Petitioner challenges Exts.P12, P13, P15 and P17 orders.

2. Learned Government Pleader on instruction submits that the revision petitions are not yet disposed of. In the interests of justice the second respondent is directed to take note of Ext.P20 and hear the petitioners and respondent No.5 also before orders are passed on Exts.P18 and P19. It is open to the petitioners to rely on the decision of this court reported in **George v. State of Kerala** (1998(2) K.L.T.

637), besides of course relying on Ext.P8 Government Order and Ext.P16 Circular. A decision will be taken by the second respondent in accordance with law, after hearing the petitioners and the Manager, as aforesaid on Exts. P18 and P19 within a period of six weeks from the date of production of a copy of this judgment. Petitioners will also make available a copy of this writ petition to the second respondent.

The writ petition is disposed of as above.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.